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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-168

JOINT PETITION FOR RECONSIDERATION

@Link Networks, Inc. ("@Link"), DSL.net, Inc. ("DSL.net") and MGC Communications, Inc., d/b/a Mpower Communications Corp. ("Mpower") (collectively referred to as "the Companies"), by counsel, hereby request that the Federal Communications Commission ("Commission") reconsider the portions of its Third Report And Order, released on November 5, 1999[1] that allow incumbent local exchange companies ("ILECs") to charge competitive local exchange companies ("CLECs") for conditioning loops so that CLECs can offer advanced services.

I. INTRODUCTION

The Companies are facilities-based providers of local exchange voice and DSL service in numerous states throughout the countryt. The Companies' ability to compete effectively for new customers, and to continue to serve the needs of existing customers in an efficient and cost-effective manner, is partly dependent upon its ability to obtain non-discriminatory access to

[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 90-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

conditioned loops. The Companies thus have a heightened interest in ensuring that the Commission's rules with respect to the availability of conditioned loops are crafted and implemented in a pro-competitive manner.

Since passage of the Telecommunications Act of 1996[2], consumer demand for innovative, high speed, high capacity advanced services has exponentially increased. CLECs have responded to this demand with a host of advanced service offerings that make available to consumers a wide array of new, high tech services at lower prices than were ever thought possible. These advanced services use the existing ILEC infrastructure to provide high speed connections between subscribers and packet switched networks over the ordinary copper telephone loops that connect residences and businesses to the central offices of the ILEC that serve them.

In order to enhance voice transmission, the ILECs have encumbered some copper telephone loops with equipment such as bridge taps, low-pass filters, range extenders and similar devices. While these encumbrances may improve voice transmission capability and help ILECs gain architectural flexibility, they also severely diminish the loops' capacity to deliver advanced services. CLECs thus cannot utilize encumbered loops for advanced services unless they are first cleaned or conditioned to remove the encumbrances. Provision by an ILEC of "clean copper" or "conditioned loops" is thus a prerequisite to a CLEC's provision of advanced services.

The *UNE Remand Order* addresses a host of issues pertaining to the statutory requirement that ILECs provide CLECs with access to certain network elements, including conditioned loops.[3] Specifically, the *UNE Remand Order* acknowledges that the local loop's capacity to deliver advanced services may in certain instances be impaired by the existence of

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[2]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et. seq.

[3]*See UNE Remand Order*, ¶¶ 172-3.

certain devices placed on the loop by ILECs.[4] The *UNE Remand Order* further concludes that conditioned loops are within the definition of the loop network element,[5] and that ILECs, upon carrier request, must condition those loops so the requesting carrier can provide advanced services.[6] Stated another way, the *UNE Remand Order* requires that, when a CLEC requests access to a loop as an unbundled network element, the ILEC must provide the native loop's features, functions and capabilities as unbundled network elements. This may require conditioning of the loop by removing the encumbrances so the CLEC can offer advanced services[7]

Unfortunately the *UNE Remand Order* addresses only a part of the problem experienced by CLECs as it concerns providing advanced services. First, while the *UNE Remand Order* is correct in requiring that ILECs provide native loops in a form that allows CLECs to provide advanced services, the requirement that CLECs compensate ILECs when loop conditioning is required is inconsistent with the pro-competitive goals of the Telecommunications Act, and should be reconsidered.

Second, if the Commission continues to allow ILECs to impose loop conditioning charges, it should acknowledge that: (1) some loops are not encumbered in the first place; and (2) in some instances, an ILEC may have several loops available, only some of which are encumbered. In those instances, where a basic loop is available and conditioning is not necessary, the ILEC should be prohibited from imposing a loop conditioning charge.

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[4] *Id.*, ¶ 172.

[5] *See* ¶ 173.

[6] *Id.*, ¶ 191.

[7] *Id.*

II. REQUIRING CLECs TO PAY FOR LOOP CONDITIONING IS CONTRARY TO THE COMMISSION'S FORWARD-LOOKING PRICING METHODOLOGY

The Commission's rules require that line conditioning charges comply with rate structure rules established pursuant to the forward-looking economic cost-based pricing methodology.[8] In a forward-looking environment, the ILEC loops would already be conditioned for the provision of advanced services. Thus, the *UNE Remand Order* effectively permits ILECs to impose upon CLECs charges representing sunk costs. These costs pose a barrier for CLECs wishing to offer advanced services using the full capabilities of the local loop. The requirement that CLECs compensate ILECs to condition loops under these circumstances is contrary to the Commission's forward-looking economic cost-based pricing methodology.

A. The Commission Should Reconsider Its Decision Requiring CLECs To Pay ILECs Loop Conditioning Costs Since Loops Would Already Be Conditioned In A Forward Looking Environment

The Commission's rules state that forward-looking costs are calculated "based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers."[9] Thus, ILECs are expressly prohibited from recovering more than the total forward-looking economic costs of providing conditioned loops. The decision requiring CLECs to pay ILECs to condition loops is contrary to the Commission's rules and should be reconsidered.

The *UNE Remand Order* recognizes that a loop can only be data ready if it is unencumbered by intervening devices such as load coils, excessive bridge tap and repeaters. Stated another way, a forward-looking loop does not contain these intervening devices, but rather, is already conditioned for the provision of advanced services. Allowing ILECs to charge CLECs to condition loops thus requires CLECs to compensate ILECs for embedded costs. The

[8] 47 C.F.R. § 51.503(b)(1).

[9] 47 C.F.R. § 51.505(b)(1).

fact that an ILEC "may incur costs in removing [these encumbrances]"[10] is not reason enough to require CLECs to incur these costs.

Permitting ILECs to be compensated to remove the encumbrances is entirely at odds with the Commission's forward-looking pricing methodology and has no place in a forward-looking cost model. The Commission should reconsider it decision requiring CLECs to pay ILECs to provide forward looking networks for the provision of advanced services.

B. The Commission Should Disallow Conditioning Charges On Loops Less Than Eighteen Thousand Feet In Length

Even if the Commission allows the *UNE Remand Order's* embedded pricing principles to stand, it should not allow ILECs to use those principles to recover the costs of conditioning loops less than 18,000 feet in length. The *UNE Remand Order* recognizes that "networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter."[11] Moreover, the Commission has recognized that loop conditioning does not provide a superior loop, "but merely enables a requesting carrier to use the basic loop."[12]

It would be bad enough if the ILECs were able to recover conditioning charges for loops over 18,000 feet. But by allowing ILECs to recover for conditioning these shorter loops, the Commission is requiring CLECs to pay ILECs a fee to "unencumber" an unbundled network element that the Commission recognizes should be provided in unencumbered fashion in the first place. Permitting ILECs to impose this charge on CLECs under these circumstances is inconsistent with forward-looking pricing principles, and the Commission should reconsider its decision allowing ILECs to impose conditioning charges on loops less than 18,000 feet in length.

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[10] *UNE Remand Order*, ¶ 193.

[11] *Id.* The Commission acknowledged this fact again in *Deployment of Wireline Service Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order In CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (rel. Dec. 9, 1999) at ¶¶ 82-3.

[12] *Id.*, ¶ 173.

C. The Commission Should Reconsider Its Decision Permitting ILECs To Recover Line Conditioning Costs As Non Recurring Charges

The *UNE Remand Order* recognizes that ILECs "may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits," and cautions state commissions to ensure that line conditioning costs comply with the Commission's pricing rules for nonrecurring costs.[13] The Commission should reconsider its decision requiring state commissions to permit ILECs to recover conditioning costs as nonrecurring charges.

Though line-conditioning charges can be viewed as nonrecurring costs, they need not necessarily be recovered in the form of nonrecurring charges. Moreover, it is inconsistent to defer to state commissions with respect to the manner in which line conditioning costs should be recovered, and then require them to allow ILECs to recover the costs in the form of nonrecurring charges. In order to allow state commissions the flexibility to determine how line conditioning costs should be recovered in any given circumstance, the Commission should reconsider its decision requiring them to allow costs to be recovered in the form of nonrecurring charges.

III. ILECs SHOULD BE PROHIBITED FROM IMPOSING CONDITIONING CHARGES WHEN THERE IS NO ACTUAL, DEMONSTRATED NEED TO CONDITION A LOOP TO SERVICE A CLECs REQUEST

Even if the Commission affirms its determination that ILECs can impose loop conditioning charges, it should clarify that ILECs can only impose those charges where they are actually incurred. For example, in stances where the loop the ILEC will use to fulfill the CLECs request is not encumbered in the first place, the ILEC should be prohibited from imposing a loop conditioning charge. Similarly, where there is more than one loop available to fill the CLEC request, at least one of which is unencumbered, the Commission should clarify that ILEC must use the unencumbered loop to fulfill the CLEC request. The Commission should further clarify that in such cases, the ILEC is prohibited from imposing a loop conditioning charge at all.

[13] *See Id.*, ¶ 194.

IV. CONCLUSION

It is undisputed that a forward-looking network would not contain the encumbrances that must be removed from ILEC facilities in order for CLECs to provide advanced services. The Commission's decision forcing CLECs to pay ILECs to remove those encumbrances so advanced services can be provided is thus wholly inconsistent with the Commission's forward-looking pricing principles and should be reconsidered. Even if the Commission does not reconsider this decision with respect to loops over 18,000 feet, it should do so with respect to loops under 18,000 feet since these shorter lines do not normally require voice-transmission enhancing devices.

Finally, the Commission should clarify that ILECs may only impose loop conditioning charges when costs to condition loops are actually occurred. Furthermore, the Commission should ensure that if an unencumbered loop is available to meet a CLECs request for a basic loop, the ILEC is required to provide that basic loop and cannot incur costs to condition another loop just so those costs can be imposed on the CLEC.

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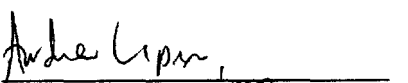
Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Marcella Schiappacasse, hereby certify that on the 17th day of February, 2000, I have served a copy of the foregoing ***Joint Petition for Reconsideration*** , via hand delivery and U.S. Mail, postage pre-paid, on the following:

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